



Hate Crime and Public Order (Scotland) Act 2021

2021 asp 14

PART 4

FURTHER PROVISION RELATING TO HATE CRIME

The characteristics

11 Meaning of the characteristics

- (1) This section applies for the interpretation of sections 1, 4 and 9.
- (2) A reference to age includes a reference to an age range.
- (3) A disability is a physical or mental impairment of any kind.
- (4) For the purposes of subsection (3) (but without prejudice to its generality), a medical condition which has, has had, or may have a substantial or long-term effect, or is of a progressive nature, is to be regarded as amounting to an impairment.
- (5) A group defined by reference to religion is a group of persons defined by reference to—
 - (a) religious belief or lack of religious belief,
 - (b) membership of or adherence to a church or religious organisation,
 - (c) support for the culture or traditions of a church or religious organisation,
 - (d) participation in activities associated with such a culture or such traditions.
- (6) A reference to sexual orientation is a reference to sexual orientation towards—
 - (a) persons of the same sex,
 - (b) persons of a different sex, or
 - (c) both persons of the same sex and persons of a different sex.
- (7) A person is a member of a group defined by reference to transgender identity if the person is—
 - (a) a female-to-male transgender person,

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- (b) a male-to-female transgender person,
- (c) a non-binary person,
- (d) a person who cross-dresses,

and references to transgender identity are to be construed accordingly.

- (8) A person is a member of a group defined by reference to variations in sex characteristics if the person is born with physical and biological sex characteristics which, taken as a whole, are neither—
- (a) those typically associated with males, nor
 - (b) those typically associated with females,
- and references to variations in sex characteristics are to be construed accordingly.

12 Power to add the characteristic of sex

- (1) The Scottish Ministers may by regulations add the characteristic of sex to the list of characteristics in one or more of the following provisions—
- (a) section 1(2),
 - (b) section 4(3),
 - (c) section 9(a).
- (2) Regulations under this section may modify sections 14(3) and 15(4) by making provision about the information relating to the characteristic of sex which may require to be included in reports under those sections.
- (3) Regulations under this section may modify section 11 by adding interpretative provision relating to the characteristic of sex.
- (4) Regulations under this section—
- (a) may make incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) may make different provision for different purposes,
 - (c) are subject to the affirmative procedure.
- (5) Before laying a draft of a Scottish statutory instrument containing regulations under this section before the Scottish Parliament, the Scottish Ministers must—
- (a) lay before the Scottish Parliament a proposed draft of the instrument,
 - (b) have regard to any representations about the proposed draft that are made to them within the period of 40 days beginning with the day on which the proposed draft is laid and make any changes to the draft instrument that they consider appropriate.
- (6) In calculating the period of 40 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than 4 days.

Providers of information society services

13 Provision in relation to providers of information society services

Schedule 1 makes further provision about offences under sections 3 and 4 in relation to persons providing information society services (as defined in paragraph 4 of that schedule).

Reports relating to hate crime

14 Publication of reports on hate crime convictions

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of each reporting year, publish a report on convictions during that reporting year for—
 - (a) offences aggravated by prejudice within the meaning of section 1, and
 - (b) offences under this Act.
- (2) The Scottish Ministers must provide information about the groups to which the offences relate by including in the report—
 - (a) information about convictions for offences which, by virtue of being offences under section 3 or 4(1), relate to groups defined by reference to race, colour, nationality (including citizenship), or ethnic or national origins,
 - (b) in respect of each conviction for an offence aggravated by prejudice within the meaning of section 1, information about the type of prejudice by which the offence was aggravated (by reference to one or more of the characteristics mentioned in section 1(2)), and
 - (c) in respect of each conviction for an offence under section 4(2), information about the characteristic to which the offence relates (by reference to one or more of the characteristics mentioned in section 4(3)).
- (3) The Scottish Ministers must—
 - (a) take reasonable steps to establish whether the information provided under subsection (2) about the groups to which the offences relate may be supplemented by information about any subgroups to which the offences relate, including (in particular) where a conviction is for an offence relating to a group defined by reference to—
 - (i) age, the particular age or age range to which the offence relates,
 - (ii) disability, the particular type of disability to which the offence relates, including whether it is a physical impairment or a mental impairment,
 - (iii) race, colour, nationality (including citizenship), or ethnic or national origins, the particular race, colour, nationality (including citizenship), or ethnic or national origins to which the offence relates,
 - (iv) religion or, in the case of a social or cultural group, perceived religious affiliation, the particular religion (including lack of religious belief) or religious affiliation to which the offence relates,
 - (v) sexual orientation, whether the offence relates to sexual orientation towards persons of the same sex, towards persons of a different sex, or towards both persons of the same sex and persons of a different sex,
 - (vi) transgender identity, whether the offence relates to identity as a female-to-male transgender person, as a male-to-female transgender person, as a non-binary person, or as a person who cross-dresses, and
 - (b) if they establish that the information provided under subsection (2) may be so supplemented, take reasonable steps to obtain that supplementary information and include it in the report.
- (4) The report must not include information in respect of any conviction—
 - (a) which identifies any individual, or
 - (b) from which the identity of any individual may be ascertained.

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- (5) The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.
- (6) In this section, “reporting year” means a period of one year ending on 31 March.

15 Publication of reports on hate crime recorded by police

- (1) The chief constable of the Police Service must, as soon as reasonably practicable after the end of each reporting year, provide the information that the Scottish Ministers require in order to publish a report in accordance with this section.
- (2) The Scottish Ministers must, as soon as reasonably practicable after receipt of information under subsection (1), publish a report on records made by the Police Service during that reporting year of cases categorised by the Police Service as—
 - (a) offences aggravated by prejudice within the meaning of section 1, and
 - (b) offences under this Act.
- (3) The report must include the following information in respect of each recorded offence to the extent that this information has been recorded by the Police Service—
 - (a) the age, sex, and ethnic or national origins of any person recorded as being a victim of the offence,
 - (b) the age, sex, and ethnic or national origins of any person recorded as being a perpetrator or suspected perpetrator of the offence.
- (4) The report must include the following information to the extent that this information has been recorded by the Police Service—
 - (a) in respect of each record of an offence under section 3 and each record of an offence under section 4(1), the particular race, colour, nationality (including citizenship), or ethnic or national origins recorded as being targeted,
 - (b) in respect of each record of an offence aggravated by prejudice within the meaning of section 1 and each record of an offence under section 4(2)—
 - (i) the particular characteristic mentioned in section 1(2) or 4(3) which is recorded as being targeted,
 - (ii) where the characteristic is age, the particular age or age range recorded as being targeted,
 - (iii) where the characteristic is disability, the particular type of disability that is recorded as being targeted, including whether it is a physical impairment or a mental impairment,
 - (iv) where the characteristic is race, colour, nationality (including citizenship), or ethnic or national origins, the particular race, colour, nationality (including citizenship), or ethnic or national origins recorded as being targeted,
 - (v) where the characteristic is religion or, in the case of a social or cultural group, perceived religious affiliation, the particular religion (including lack of religious belief) or religious affiliation recorded as being targeted,
 - (vi) where the characteristic is sexual orientation, whether the sexual orientation that is recorded as being targeted is sexual orientation towards persons of the same sex, towards persons of a different sex, or towards both persons of the same sex and persons of a different sex,

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- (vii) where the characteristic is transgender identity, whether the transgender identity that is recorded as being targeted is identity as a female-to-male transgender person, as a male-to-female transgender person, as a non-binary person, or as a person who cross-dresses.
- (5) The report must not include information in respect of any recorded offence—
 - (a) which identifies any individual, or
 - (b) from which the identity of any individual may be ascertained.
- (6) The report may be in any form that the Scottish Ministers consider appropriate and (in particular) may be part of another document.
- (7) In this section—
 - “Police Service” means the Police Service of Scotland,
 - “reporting year” means a period of one year ending on 31 March.